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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

VICTOR E. SOTO,

Defendant and Appellant.

B291872

(Los Angeles County
Super. Ct. No. TA036418)

APPEAL from a judgment of the Superior Court of Los Angeles County, Richard R. Ocampo, Judge. Affirmed in part and remanded in part with directions.

Derek Kowata, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Zee Rodriguez and Corey J. Robins, Deputy Attorneys General, for Plaintiff and Respondent.

INTRODUCTION

Defendant Victor Edgar Soto appeals following a sentencing hearing in which the trial court adjusted his sentence based on our previous decision, *People v. Soto* (Mar. 8, 2018, No. B270095) [nonpub. opn.]. In this appeal, defendant asserts that the matter must be remanded again for resentencing pursuant to Penal Code section 1385,¹ as amended by Senate Bill 1393, effective January 1, 2019, to allow the trial court to exercise its discretion whether to strike the 5-year enhancements imposed pursuant to section 667, subdivision (a)(1). We agree, and remand the matter for the trial court's consideration.

BACKGROUND AND DISCUSSION

The underlying facts of this case are discussed in our previous opinion, and we recite only the facts relevant to the current appeal here.

After a jury trial, defendant was convicted of murder (§ 187, subd. (a), count 1), and attempted murder (§§ 187, subd. (a), 664, count 2). The jury also found true allegations that the crime was committed for the benefit of a gang and defendant personally used a firearm in the commission of both offenses. (§§ 186.22, subd. (b)(1), 1203.06, subd. (a)(1), 12022.5, subd. (a).) The court sentenced defendant to 100 years to life, calculated as follows: On count 1, the court sentenced defendant to 25 years to life, doubled pursuant to the Three Strikes law, with a consecutive term of ten years pursuant to section 12022.5, for a total of 60 years to life. On count 2, the court sentenced defendant to 15 years to life, doubled pursuant to the Three Strikes law, with a consecutive term of ten years pursuant to

¹ All further statutory references are to the Penal Code unless otherwise indicated.

section 12022.5, for a total of 40 years to life, to run consecutive to count 1. The court stayed sentencing on the gang enhancements. Defendant appealed.

We affirmed the conviction. However, we remanded the case to adjust defendant's custody credit, and to include the five-year sentence enhancement for a prior serious felony that was, at the time, required to be imposed under former section 667, subdivision (a)(1). Defendant petitioned for review in the Supreme Court. The Supreme Court granted his petition, and transferred the case back to this court with directions to vacate our decision and reconsider the cause in light of the newly amended section 12022.5, subdivision (c), which gave trial courts discretion to strike or dismiss firearm enhancements. We remanded the case to the superior court to consider whether the section 12022.5, subdivision (a) firearm enhancements should be dismissed or stricken pursuant to section 12022.5, subdivision (c).

On remand, the trial court declined to strike the firearm enhancements, and sentenced defendant to 105 years to life—the previous sentence, plus the five-year enhancement required under former section 667, subdivision (a)(1).

While the appeal was pending, on September 30, 2018, the Governor signed into law Senate Bill No. 1393 (2017-2018 Reg. Sess.), which amended sections 667, subdivision (a)(1) and 1385, effective January 1, 2019 (Stats. 2018, ch. 1013, §§ 1, 2). Prior to the enactment of Senate Bill 1393, the trial court had no discretion to strike a five-year felony enhancement under section 667, subdivision (a)(1). Under amended section 1385, subdivision (b)(1), trial courts now have discretion to strike a five-year felony prior. The amendment applies to all cases not final on its effective date. (*People v. Garcia* (2018) 28 Cal.App.5th 961, 973.)

On appeal, defendant requests that his case be remanded for resentencing so that the court may exercise its discretion under the newly amended sections 667, subdivision (a)(1) and 1385, subdivision (b)(1). The Attorney General agrees that remand is appropriate. We concur.

DISPOSITION

The matter is remanded with directions to the trial court to decide, at a hearing at which defendant has the right to be present with counsel, whether the enhancement under 667, subdivision (a)(1) should be stricken under section 1385, subdivision (b)(1). The judgment is otherwise affirmed.

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COLLINS, J.

We concur:

MANELLA, P. J.

WILLHITE, J.